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SENATE BILL 360

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO PUBLIC ASSISTANCE; ENACTING THE EDUCATION WORKS
ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Education Works Act".

Section 2. DEFINITIONS.--As used in the Education Works
Act:

A. "benefit group" means a pregnant woman or a
group of people that includes a dependent child, all of that
dependent child's full, half, step- or adopted siblings living
with the dependent child's parent or relative within the fifth
degree of consanguinity and the parent with whom the children
live;

B. "cash assistance" means cash payments funded by

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1 maintenance of effort funds appropriated to the department in
2 compliance with the federal Personal Responsibility and Work
3 Opportunity Reconciliation Act of 1996, or its successor acts,
4 and distributed by the department pursuant to the Education
5 Works Act;

6 C. "department" means the human services
7 department;

8 D. "dependent child" means a natural, adopted step-
9 child or ward who is:

10 (1) seventeen years of age or younger;

11 (2) eighteen years of age and is enrolled in
12 high school; or

13 (3) between eighteen and twenty-two years of
14 age and is receiving special education services regulated by
15 the state board of education;

16 E. "director" means the director of the income
17 support division of the department;

18 F. "earned income" means cash or payment in kind
19 that is received as wages from employment or payment in lieu of
20 wages; and earnings from self-employment or earnings acquired
21 from the direct provision of services, goods or property,
22 production of goods, management of property or supervision of
23 services;

24 G. "education works program" means the cash
25 assistance, activities and services available to a recipient

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1 pursuant to the Education Works Act;

2 H. "federal act" means the federal Social Security
3 Act and rules promulgated pursuant to the Social Security Act;

4 I. "federal poverty guidelines" means the level of
5 income defining poverty by family size published annually in
6 the federal register by the United States department of health
7 and human services;

8 J. "parent" means natural parent, adoptive parent,
9 stepparent or legal guardian;

10 K. "person" means an individual;

11 L. "recipient" means a person who receives cash
12 assistance or services or a member of a benefit group who has
13 reached the age of majority;

14 M. "secretary" means the secretary of human
15 services;

16 N. "services" means child-care assistance; payment
17 for education- or employment-related transportation costs; job
18 search assistance; employment counseling; employment, education
19 and job training placement; an annual payment for education-
20 related costs; case management; or other activities whose
21 purpose is to assist transition into employment;

22 O. "unearned income" means old age, survivors and
23 disability insurance; railroad retirement benefits; veterans
24 administration compensation or pension; military retirement;
25 pensions, annuities and retirement benefits; lodge or fraternal

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1 benefits; shared shelter payments; settlement payments;
2 individual Indian money; child support; unemployment
3 compensation benefits; union benefits paid in cash; gifts and
4 contributions; and real property income; and

5 P. "vehicle" means a conveyance for the
6 transporting of persons to or from employment or education for
7 the activities of daily living or for the transportation of
8 goods; "vehicle" does not include boats, trailers or mobile
9 homes used as a principal place of residence.

10 Section 3. APPLICATION--RESOURCE PLANNING SESSION--
11 INDIVIDUAL EDUCATION PLAN--REVIEW PERIODS.--

12 A. Application for cash assistance or services
13 shall be made to the department's county office in the county
14 or district in which an applicant resides. The application
15 shall be in writing or reduced to writing in the manner and on
16 the form prescribed by the department. The application shall
17 be made under oath by an applicant with whom a dependent child
18 resides and shall contain a statement of the age of the child,
19 residence, a complete statement of the amount of property in
20 which the applicant has an interest, a statement of all income
21 that he and other benefit group members have at the time of the
22 filing of the application and other information required by the
23 department.

24 B. Application for expedited food stamps shall be
25 made to the department's county office in the county or

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1 district in which an applicant resides. The department shall
2 process the application for expedited food stamps within
3 twenty-four hours after the application is made.

4 C. At the time of application for cash assistance
5 and services, an applicant shall identify everyone who is to be
6 counted in the benefit group. Once an application is approved,
7 the recipient shall advise the department if there are any
8 changes in the membership of the benefit group.

9 D. No later than thirty days after an application
10 is filed, the department shall make referrals and act on the
11 application.

12 E. No later than five days after an application is
13 approved, the department shall provide reimbursement for child
14 care.

15 F. Whenever the department receives an application
16 for assistance, a verification and record of the applicant's
17 circumstances shall promptly be made to ascertain the facts
18 supporting the application and to obtain other information
19 required by the department. The verification may include a
20 visit to the home of the applicant, as long as the department
21 gives adequate prior notice of the visit to the applicant.

22 G. The department shall work with the recipient to
23 develop an individual educational plan that:

24 (1) sets forth the educational goal for the
25 recipient, identifies barriers to that goal and identifies the

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1 steps to be taken by the recipient to achieve that goal;

2 (2) describes the services the department may
3 provide so that the recipient may complete his educational
4 goal; and

5 (3) provides for meetings with the recipient
6 every six months or at the end of each academic term to review
7 the current financial eligibility of the benefit group and to
8 review and revise his individual education plan.

9 H. The recipient and a representative of the
10 department shall sign the recipient's individual education
11 plan. The department shall:

12 (1) not allow a recipient to decline to
13 participate in developing an individual education plan;

14 (2) not waive the requirement that a recipient
15 develop an individual education plan; and

16 (3) emphasize the importance of the individual
17 education plan to the recipient.

18 Section 4. EDUCATION WORKS PROGRAM - ELIGIBILITY - -
19 RESTRICTIONS - - REQUIREMENTS. - -

20 A. A recipient is eligible to receive education
21 works services or cash assistance if the recipient demonstrates
22 that:

23 (1) at the time of the application, the
24 recipient does not have a bachelor's degree;

25 (2) the recipient has been accepted or has

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1 been determined to be eligible to enroll in a two- or four-year
2 post-secondary degree program; and

3 (3) the degree the recipient will receive will
4 increase his ability to engage in full-time paid employment.

5 B. A recipient shall not receive cash assistance
6 funded by the temporary assistance for needy families block
7 grant during the period in which the recipient is receiving
8 cash assistance pursuant to the Education Works Act.

9 C. A recipient shall apply for all financial aid
10 available from the post-secondary educational institution that
11 the recipient attends.

12 D. During the twenty-four months of participation
13 in the education works program, a recipient shall engage in at
14 least twenty hours per week of class time, studying, work, work
15 study or volunteering. The department shall assume that a
16 recipient spends one and one-half hours studying for every hour
17 of class time.

18 E. A recipient may participate in the education
19 works program for no more than twenty-four months unless the
20 recipient demonstrates good cause for the following reasons:

21 (1) illness;

22 (2) caring for an aging parent or a special
23 needs child; or

24 (3) a learning disability or other kind of
25 mental or physical health problem.

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1 F. The number of recipients enrolled in the
2 education works program is limited to the number of recipients
3 who can be served by the funds available.

4 G. A recipient may earn only one degree through the
5 education works program.

6 H. For purposes of this section, "work" means work
7 study, training-related practicums, internships, paid
8 employment, volunteering or any other activity approved by the
9 department.

10 Section 5. FINANCIAL STANDARD OF NEED. --

11 A. The secretary shall adopt a financial standard
12 of need based upon the availability of state funds.

13 B. The following income sources are exempt from the
14 gross income test, the net income test and the cash payment
15 calculation:

- 16 (1) medicaid;
- 17 (2) food stamps;
- 18 (3) government-subsidized foster care payments
19 if the child for whom the payment is received is also excluded
20 from the benefit group;
- 21 (4) supplemental security income;
- 22 (5) government-subsidized housing or housing
23 payments;
- 24 (6) federally excluded income;
- 25 (7) educational payments made directly to an

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1 educational institution;

2 (8) government-subsidized child care;

3 (9) earned income that belongs to a person
4 seventeen years of age or younger who is not the head of
5 household;

6 (10) fifty dollars (\$50.00) of collected child
7 support passed through to the recipient by the child support
8 enforcement division of the department; and

9 (11) other income sources as determined by the
10 department.

11 C. The total countable gross earned and unearned
12 income of the benefit group shall not exceed eighty-five
13 percent of the federal poverty guidelines for the size of the
14 benefit group.

15 D. For a benefit group to be eligible to
16 participate:

17 (1) earned and unearned income that belongs to
18 the benefit group shall not exceed eighty-five percent of the
19 federal poverty guidelines for the size of the benefit group;
20 and

21 (2) earned and unearned income that belongs to
22 the benefit group shall not equal or exceed the financial
23 standard of need after applying the disregards set out in
24 Paragraphs (1) through (4) of Subsection E of this section.

25 E. Subject to the availability of state funds, the

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1 department shall determine the cash payment of the benefit
2 group by applying the following disregards to the benefit
3 group's earned income and then subtracting that amount from the
4 benefit group's financial standard of need:

5 (1) for the first two years of receiving cash
6 assistance or services, if a recipient works over the work
7 requirement rate set by the department pursuant to the
8 Education Works Act, one hundred percent of the income earned
9 by the recipient beyond that rate;

10 (2) for the first two years of receiving cash
11 assistance or services, for a two-parent benefit group, one
12 hundred percent of income earned by each recipient beyond the
13 work requirement rate set by the department;

14 (3) one hundred twenty-five dollars (\$125) of
15 monthly earned income and one-half of the remainder, or for a
16 two-parent family, two hundred twenty-five dollars (\$225) of
17 monthly earned income and one-half of the remainder for each
18 parent;

19 (4) monthly payments made for child care at a
20 maximum of two hundred dollars (\$200) for a child under two
21 years of age and a maximum of one hundred seventy-five dollars
22 (\$175) for a child two years of age or older;

23 (5) costs of self-employment income; and

24 (6) business expenses.

25 F. The department may recover overpayments of cash

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1 assistance on a monthly basis not to exceed fifteen percent of
2 the financial standard of need applicable to the benefit group.

3 Section 6. RESOURCES. --

4 A. Liquid and nonliquid resources owned by the
5 benefit group shall be counted in the eligibility
6 determination.

7 B. A benefit group may at a maximum own the
8 following resources:

9 (1) two thousand dollars (\$2,000) in nonliquid
10 resources;

11 (2) one thousand five hundred dollars (\$1,500)
12 in liquid resources;

13 (3) the value of the principal residence of
14 the recipient;

15 (4) the value of burial plots and funeral
16 contracts for family members;

17 (5) individual development accounts; and

18 (6) the value of work-related equipment up to
19 one thousand dollars (\$1,000).

20 C. Vehicles owned by the benefit group shall not be
21 considered in the determination of resources attributed to the
22 benefit group.

23 Section 7. INELIGIBILITY. --

24 A. The following are ineligible to be members of a
25 benefit group:

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1 (1) an inmate or patient of a nonmedical
2 institution;

3 (2) a person who, in the two years preceding
4 application, assigned or transferred real property unless he:

5 (a) received or receives a reasonable
6 return;

7 (b) attempted to or attempts to receive
8 a reasonable return; or

9 (c) attempted to or attempts to regain
10 title to the real property;

11 (3) a minor unmarried parent who has not
12 successfully completed a high school education and who has a
13 child at least twelve weeks of age in his care unless the minor
14 unmarried parent:

15 (a) participates in educational
16 activities directed toward the attainment of a high school
17 diploma or its equivalent; or

18 (b) participates in an alternative
19 educational or training program that has been approved by the
20 department;

21 (4) a minor unmarried parent who is not
22 residing in a place of residence maintained by his parent,
23 legal guardian or other adult relative unless the department:

24 (a) refers or locates the minor
25 unmarried parent to a second-chance home, maternity home or

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1 other appropriate adult-supervised supportive living
2 arrangement and takes into account the needs and concerns of
3 the minor unmarried parent;

4 (b) determines that the minor unmarried
5 parent has no parent, legal guardian or other appropriate adult
6 relative who is living or whose whereabouts are known;

7 (c) determines that a minor unmarried
8 parent is not allowed to live in the home of a living parent,
9 legal guardian or other appropriate adult relative;

10 (d) determines that the minor unmarried
11 parent is or has been subjected to serious physical or
12 emotional harm, sexual abuse or exploitation in the home of the
13 parent, legal guardian or other appropriate adult relative;

14 (e) finds that substantial evidence
15 exists of an act or a failure to act that presents an imminent
16 or serious harm to the minor unmarried parent and the child of
17 the minor unmarried parent if they live in the same residence
18 with the parent, legal guardian or other appropriate adult
19 relative; or

20 (f) determines that it is in the best
21 interest of the unmarried minor parent to waive this
22 requirement;

23 (5) a minor child who has been absent or is
24 expected to be absent from the home for forty-five days;

25 (6) a person who does not provide a social

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1 security number or who refuses to apply for one;

2 (7) a person who is not a resident of
3 New Mexico;

4 (8) a person who fraudulently misrepresented
5 residency to receive assistance in two or more states
6 simultaneously, except that the person shall be ineligible only
7 for ten years;

8 (9) a person who is a fleeing felon or a
9 probation and parole violator;

10 (10) a person concurrently receiving
11 supplemental security income, tribal temporary assistance for
12 needy families or bureau of Indian affairs general assistance;
13 and

14 (11) unless he demonstrates good cause, a
15 parent who does not assist the department in establishing
16 paternity or obtaining child support or who does not assign
17 support rights to New Mexico as required pursuant to the
18 federal act.

19 B. For the purposes of this section, "second-chance
20 home" means an entity that provides a supportive and supervised
21 living arrangement to a minor unmarried parent where the minor
22 unmarried parent is required to learn parenting skills,
23 including child development, family budgeting, health and
24 nutrition and other skills to promote long-term economic
25 independence and the well-being of children.

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1 C. Pursuant to the authorization provided to the
2 states in the Personal Responsibility and Work Opportunity
3 Reconciliation Act of 1996, 21 U.S.C. Section 862a(d)(1)(A),
4 New Mexico elects to exempt all persons domiciled in the state
5 from application of 21 U.S.C. Section 862a(a).

6 Section 8. FAIR HEARING--REVIEW AND APPEAL.--

7 A. A recipient may request a hearing if:

8 (1) an application is not acted on within a
9 reasonable time after the filing of the application;

10 (2) an application is denied in whole or in
11 part; or

12 (3) the cash assistance or services are
13 modified, terminated or not provided.

14 B. The department shall notify the recipient of his
15 rights under this section.

16 C. The department shall by rule establish
17 procedures for the filing of a request for a hearing and the
18 time limits within which a request may be filed; provided,
19 however, that the department may grant reasonable extensions of
20 the time limits. If the request is filed in a timely manner,
21 cash assistance and services shall be provided until the appeal
22 is resolved. If the request is not filed within the specified
23 time for appeal or within whatever extension the department may
24 grant, the department action shall be final. Upon receipt of a
25 timely request, the department shall give the recipient

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1 reasonable notice of an opportunity for a fair hearing in
2 accordance with the rules of the department.

3 D. The hearing shall be conducted by a hearing
4 officer designated by the director. The powers of the hearing
5 officer shall include administering oaths or affirmations to
6 witnesses called to testify, taking testimony, examining
7 witnesses, admitting or excluding evidence and reopening a
8 hearing to receive additional evidence. The technical rules of
9 evidence and the rules of civil procedure shall not apply. The
10 hearing shall be conducted so that the contentions or defenses
11 of each party to the hearing are amply and fairly presented.
12 Each party may be represented by counsel or other
13 representative and may conduct cross-examination. Oral or
14 documentary evidence may be received, but the hearing officer
15 may exclude irrelevant, immaterial or unduly repetitious
16 evidence.

17 E. The director shall review the record of the
18 proceedings and shall make his decision on the record. The
19 recipient or his representative shall be notified in writing of
20 the director's decision and the reasons for the decision. The
21 written notice shall inform the recipient of his right to
22 judicial review. The department shall be responsible for
23 ensuring that the decision is enforced.

24 F. Within thirty days after receiving written
25 notice of the decision of the director, a recipient may file a

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1 notice of appeal with the court of appeals together with a copy
2 of the notice of the decision. The clerk of the court shall
3 transmit a copy of the notice of appeal to the director.

4 G. The filing of a notice of appeal shall not stay
5 the enforcement of the decision of the director, but the
6 department may grant, or the court upon motion and good cause
7 shown may order, a stay.

8 H. Within twenty days after receipt of the notice
9 of appeal, the department shall file with the clerk of the
10 court three copies and furnish to the appellant one copy of the
11 written transcript of the record of the proceedings.

12 I. If, before the date set for argument,
13 application is made to the court for leave to present
14 additional evidence and the court is satisfied that the
15 additional evidence is material and there was good reason for
16 not presenting it in the hearing, the court may order the
17 additional evidence taken before the department. If the
18 application to present additional evidence is filed by the
19 department and is approved by the court, the department's
20 decision that is being appealed shall be stayed. The director
21 may modify his findings and decision by reason of the
22 additional evidence and shall file with the court a transcript
23 of the additional evidence together with any modified or new
24 findings or decision.

25 J. The review of the court shall be made upon the

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1 decision and the record of the proceedings.

2 K. The court shall set aside a decision and order
3 of the director only if the decision is found to be:

4 (1) arbitrary, capricious or an abuse of
5 discretion;

6 (2) not supported by substantial evidence in
7 the record as a whole; or

8 (3) otherwise not in accordance with law.

9 L. The department shall not authorize or allow
10 expenditures in excess of the amounts previously appropriated
11 by the legislature.

12 Section 9. SATISFACTORY PARTICIPATION. --

13 A. To maintain satisfactory participation in the
14 education works program, a recipient shall be a full-time
15 student as defined by the school that the recipient attends.

16 B. If a recipient falls below the academic standard
17 of the school in one semester, he shall be placed on
18 probationary status for one semester to improve his grades. If
19 a recipient's overall grade point average falls below 2.0 based
20 on a four-point system, the department shall place him on
21 probation for a maximum of two semesters to allow him to bring
22 up his overall grade point average.

23 C. A recipient shall:

24 (1) attend classes as scheduled and
25 participate as required by the standard of the school;

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1 (2) report to the department anything that may
2 affect his ability to participate in the education works
3 program;

4 (3) provide the department with copies of any
5 financial aid award letters; and

6 (4) provide the department with copies of his
7 grades as they become available.

8 D. If a recipient does not comply with Subsection C
9 of this section, the department may require the recipient to
10 apply for public assistance pursuant to the New Mexico Works
11 Act. This decision shall be made in writing and the recipient
12 shall have the opportunity to appeal the decision.

13 Section 10. EMERGENCY.--It is necessary for the public
14 peace, health and safety that this act take effect immediately.